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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. [redacted] 9

P. J. CARLIN CONSTRUCTION CO. AND THE TRAVELERS INSURANCE COMPANY,

Appellants,

vs.

EDWARD HEANEY AND STATE INDUSTRIAL BOARD OF THE STATE OF NEW YORK.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

STATEMENT OPPOSING JURISDICTION.

JOHN J. BENNETT, JR.,
Attorney General of New York.
HENRY EPSTEIN,
Solicitor General of New York.
JOSEPH A. McLAUGHLIN,
ROY WIEDERSUM,
Assistant Attorneys General,
Of Counsel.

INDEX.

SUBJECT INDEX.

	Page
Statement opposing jurisdiction	1
The matter sought to be reviewed is one of local concern—there is no substantial Federal question presented upon this appeal	1
The validity of the State statute as applied in this case is established by principles expressed by this Honorable Court in cases heretofore decided	4

TABLE OF CASES CITED.

Alaska Packers Association v. Ind. Acc. Commission (1927), 276 U. S. 467	5
Grant Smith-Porter Ship Co. v. Rhode (1921), 257 U. S. 469, 66 L. Ed. 321	4
Miller's Indemnity Underwriters v. Braud (1926), 270 U. S. 59, 70 L. Ed. 470	4
State Industrial Board v. Terry & Compny, 273 U. S. 639	5
State Ind. Comm. v. Nordenholt (1922), 259 U. S. 263, 66 L. Ed. 933	5
Sultan Railway & Timber Co. v. Dept. of Labor and Industries (1927), 277 U. S. 135	5

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 817

P. J. CARLIN CONSTRUCTION CO. AND THE TRAVELERS INSURANCE COMPANY,

Appellants,

vs.

EDWARD HEANEY AND STATE INDUSTRIAL BOARD OF THE STATE OF NEW YORK.

Appellees.

STATEMENT DISCLOSING MATTER AND GROUND MAKING AGAINST THE JURISDICTION OF THIS COURT.

MAY IT PLEASE THE COURT:

The Industrial Board of the State of New York, Appellee, in support of its objection to the jurisdiction of this Court to review the above entitled case on appeal, respectfully represents:

A.

The Matter Sought to be Reviewed is One of Local Concern—There is no Substantial Federal Question Presented Upon This Appeal.

On September 9, 1932, the appellee, Edward Heaney, was a bricklayer employed by the P. J. Carlin Construction

Co. and received injuries on that day as a result of being thrown from the steamer "Observation" into the water by reason of an explosion in or about said steamer. Said steamer or ferryboat was proceeding from Manhattan Island to Riker's Island—all within the boundaries of the State of New York.

At the time of the said explosion and prior thereto, the P. J. Carlin Construction Co. was the general contractor in connection with certain penitentiary construction work on Riker's Island, New York, which was being performed pursuant to a contract with the City of New York.

The contract between the City of New York and the P. J. Carlin Construction Co. contained the following clause:

> "Each Contractor shall investigate the existing means of transportation to and from Rikers Island. The City shall not be held responsible for providing regular ferry service. The Contractor must assume responsibility for the transportation from Mainland to island of men and materials for all work done under this contract."

Subsequent to the execution of the aforesaid contract, the P. J. Carlin Construction Co. entered into an agreement with George I. Forsyth, owner of the steamer, "Observation", whereby the latter was to "operate a ferry service for the transportation of men engaged upon the construction of the Riker's Island Penitentiary Building" upon certain terms and conditions. Among other terms of this contract was one providing that Forsyth was to be compensated for this transportation by collecting fares from the men at the rate of ten cents a round trip. The P. J. Carlin Construction Co. guaranteed to Forsyth a daily total of $60 in fares.

The steamer "Observation" was not owned, operated or controlled by the employer-appellant, P. J. Carlin Con-

struction Co. The employer-appellant was not a carrier in any sense nor was it interested in the investment of money in ships. There is no evidence in the record to show that the said employer, or in fact anyone else, was guilty or legally implicated in a maritime tort.

The appellee, Edward Heaney, performed no duties on said steamer nor had any connection with the operation thereof. At the time of the accident he was merely being transported to Riker's Island.

The only means of transportation between the Mainland and Riker's Island was the steamer "Observation" and the municipal ferry. The employees of P. J. Carlin Construction Co. were instructed by the employer to use only one means of transportation from the Mainland to Riker's Island and return, namely, the steamer "Observation" and were forbidden to ride on the municipal ferry.

The record discloses that the employer issued passes to the employees, generally supervised their conduct while on the steamer "Observation" and restricted the employees, including the Appellee, Edward Heaney, to this one means of ingress to and egress from Riker's Island.

In the Appellate Courts of New York State, the appellants herein contended that the injuries sustained by the Appellee, Edward Heaney, did not arise out of and in the course of the employment, and that the matter of the claim was subject to maritime jurisdiction. These issues were determined adversely to the contention of the appellants in both the Supreme Court, Appellate Division, Third Department, and the Court of Appeals of the State of New York.

The record on appeal in the case at bar contains no proof establishing a tort. It merely discloses that the Appellee, Edward Heaney, suffered injuries as a result of being thrown into the water by reason of an explosion in or about the steamer "Observation". The record also discloses

that the owner of the steamer "Observation" lost his life in the same occurrence.

To justify an award of disability compensation under the terms of the Workmen's Compensation Law of the State of New York, proof of the commission of a tort is unnecessary. Proof that the accidental injuries arose out of and in the course of the employment constitutes the principal element of liability. The award under the Workmen's Compensation Law in favor of the Appellee, Edward Heaney, was not made on the theory that a tort had been committed. His rights under said Workmen's Compensation Law derive not from tort but from contract and this contract was not maritime in nature. It involved and embodied the contract of employment to perform services in connection with the construction and erection of a penitentiary on Ricker's Island, New York.

The appellee, Edward Heaney's employment pertained to local matters, having no relation to navigation and commerce, and the application of the Workmen's Compensation Law worked no material prejudice to the characteristic features of the General Maritime Law or interfered with its uniformity.

It is therefore urged that the matter sought to be reviewed herein by this Court is one purely of local concern and presents no substantial federal question upon this appeal.

B.

The Validity of the State Statute as Applied in this Case is Established by Principles Expressed by this Honorable Court in Cases Heretofore Decided.

Miller's Indemnity Underwriters v. *Braud* (1926), 270 U. S. 59, 70 L. Ed. 470;

Grant Smith-Porter Ship Co. v. *Rhode* (1921), 257 U. S. 469, 66 L. Ed. 321;

Alaska Packers Association v. *Ind. Acc. Commission* (1927), 276 U. S. 467;

Sultan Railway & Timber Co. v. *Dept. of Labor & Industries* (1927), 277 U. S. 135;

State Ind. Comm. v. *Nordenholt* (1922), 259 U. S. 263, 66 L. Ed. 933;

State Industrial Board v. *Terry & Company*, 273 U. S. 639.

WHEREFORE, appellee respectfully submits that the Supreme Court of the United States should refuse to assume jurisdiction to review the judgment and decree appealed from.

Yours very truly,

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Attorney General of the State of New York.
HENRY EPSTEIN,
Solicitor General,
Solicitor for the Industrial Board
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